

SERVICE AGREEMENT BETWEEN THE CITY OF SUNNYVALE
AND CAPORICCI, CROPPER & LARSON, LLP
FOR FINANCIAL AUDITING SERVICES

THIS AGREEMENT dated May 15, 2001 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and CAPORICCI, CROPPER & LARSON, LLP ("AUDITOR").

WHEREAS, CITY is in need of professional financial auditing services; and

WHEREAS, AUDITOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by AUDITOR

AUDITOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. AUDITOR shall determine the method, details and means of performing the services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing AUDITOR's services.

2. Time for Performance

The term of this Agreement shall be in force up to and until AUDITOR completes all services required for the fiscal year ending June 30, 2005, unless otherwise terminated. The Agreement may be extended for two additional one-year periods at the option of CITY.

3. Duties of CITY

CITY shall supply any documents or information available to City required by AUDITOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay AUDITOR, as full compensation for services rendered pursuant to this Agreement, the amounts set forth in Exhibit "B", attached and incorporated herein by reference. AUDITOR shall submit invoices to CITY to be paid in accord with the procedures set forth in Exhibit "B".

5. Ownership of Documents

CITY shall have full and complete access to AUDITOR's working papers, drawings and other documents during progress of the work. All documents of any description prepared by AUDITOR shall become the property of the CITY at the completion of the project and upon payment in full to the AUDITOR. AUDITOR may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement AUDITOR shall not accept employment or an obligation which is inconsistent or incompatible with AUDITOR's obligations under this Agreement.

7. Confidential Information

AUDITOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which AUDITOR may become aware in the performance of its services.

8. Compliance with Laws

- (a) AUDITOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.
- (b) AUDITOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

AUDITOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and AUDITOR. AUDITOR is responsible for paying all required state and federal taxes.

10. Indemnity

AUDITOR agrees to indemnify and hold harmless CITY and its officers, officials, employees and volunteers from and against claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of AUDITOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

11. Insurance

AUDITOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and endorsements as specified in Exhibit "C."

12. CITY Representative

Cheryl Bunnell, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. AUDITOR Representative

Stephen L. Larson shall represent AUDITOR in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of AUDITOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the AUDITOR representative.

14. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Cheryl Bunnell, Finance Manager
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To AUDITOR: Stephen L. Larson, Partner
CAPORICCI, CROPPER & LARSON, LLP
~~1575 Treat Blvd., Suite 200~~ 1111 Broadway, Suite 2300
~~Walnut Creek, CA 94598~~ OAKLAND, CA 94607 *IP*

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If AUDITOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to AUDITOR. If CITY fails to pay AUDITOR, AUDITOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to AUDITOR. In the event of such termination, AUDITOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. AUDITOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

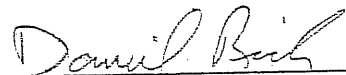
18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

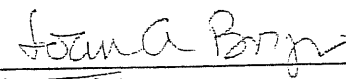
CITY OF SUNNYVALE ("CITY")

By 
Deputy City Clerk

By 
City Manager

APPROVED AS TO FORM:

CAPORICCI, CROPPER & LARSON, LLP
("AUDITOR")

By 
City Attorney


By 
STEPHEN L. LARSON
Name and Title.

EXHIBIT "A"
SERVICES TO BE PERFORMED

Scope of Work

AUDITOR shall conduct an annual independent audit of CITY's financial transactions. The purpose of this audit is to express an opinion as to the fair presentation of the general-purpose financial statements of CITY and the financial position of those funds covered in the scope of the audit in accordance with generally accepted accounting principles (GAAP) and applicable laws and regulations.

Additionally, AUDITOR shall issue separate financial and/or compliance reports relative to the following:

1. Federal Financial Assistance Single Audit
2. Redevelopment Agency of the City of Sunnyvale
3. Transportation Development Act, Article 3
4. Gann Appropriation Limit
5. Sunnyvale Financing Authority

Auditing Standards

The audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the U. S. General Accounting Office's Government Auditing Standards (July 1999 through amendment 2), the provisions of the Single Audit Act Amendments of 1996, and the provisions of the U. S. Office of Management and Budget OMB Circular A-133 Audits of State and Local Governments and Non-Profit Organizations.

Reports

AUDITOR shall issue the following reports:

1. Comprehensive Annual Financial Report (CAFR)
 - a. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
 - b. A report on the internal control structure based on AUDITOR's understanding of the control structure and assessment of control risk.
 - c. A report on compliance with applicable laws and regulations.

2. Federal Financial Assistance Programs - Single Audit:

- a. A report on the schedule of expenditures of federal awards.
- b. A statement that the audit was made in accordance with the Single Audit provisions of OMB Circular A-133, generally accepted auditing standards and the General Accounting Office's (GAO) *Government Auditing Standards* (July 1999, revised through amendment 2).
- c. A report on compliance and on internal control over financial reporting of federal financial assistance programs in accordance with the U. S. General Accounting Office's (GAO) *Government Auditing Standards* (July 1999, revised through amendment 2).
- d. A report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circular A-133.
- e. A summary of findings and questioned costs.
- f. A schedule of findings and questioned costs.
- g. Completion and sign-off on Office of Management and Budget's (OMB) form SF-SAC, *Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations*.

3. Sunnyvale Redevelopment Agency

- a. A report on the compliance and on the internal control over financial reporting based on an audit of financial statements performed in accordance with Government Auditing Standards. This report shall constitute a compliance audit for CITY's Redevelopment Agency as prescribed in *Guidelines for Compliance Audits of California Redevelopment Agencies*.
- b. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.

4. Transportation Development Act

- a. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
- b. A certification of compliance with the Transportation Development Act, Article 3.
- c. A certification of compliance with Public Utilities Code Section 99245.

5. Gann Limit

- a. A report on agreed-upon procedures applied to Appropriations Limit Worksheets.

6. Sunnyvale Financing Authority

- a. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.

The schedule of federal financial assistance and related auditor's report, as well as the reports on the internal controls and compliance, shall not be included in the comprehensive annual financial report, but shall be issued separately.

In the required reports on internal controls, AUDITOR shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect CITY's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements.

Non-reportable conditions discovered by AUDITOR shall be reported in a separate letter to CITY, which shall be referred to in the reports on internal controls.

The reports on compliance shall include all instances of non-compliance.

AUDITOR shall make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

Robert LaSala, City Manager
Mary Bradley, Director of Finance

Additional Reports and Projects at the Option of the City

AUDITOR may also participate in additional projects and/or audits or prepare special reports and/or studies, upon CITY's request. Separate contracts will be negotiated for any such additional services. AUDITOR's fees for additional services shall be based upon AUDITOR's hourly rates set forth in Exhibit "B".

Communication

During the course of the engagement, AUDITOR shall meet with and provide periodic status reports to the Finance Manager responsible for the accounting function on a regular basis. AUDITOR shall also be available to meet with the Director of Finance or Finance Manager throughout the year, as needed, to provide consultation on various accounting and auditing matters.

Special Considerations

1. Awards

CITY will send its comprehensive annual financial report (CAFR) to the Government Finance Officers Association of the United States and Canada (GFOA) for review in their Certificate of Achievement for Excellence in Financial Reporting program. CITY will also submit its CAFR to the California Society of Municipal Finance Officers' (CSMFO) Certificate of Award for Outstanding Financial Reporting program. AUDITOR shall review the City's CAFR to ensure compliance with the requirements of each award program.

2. Debt Issuance

CITY expects to prepare one or more official statements in connection with the sale or refinancing of debt securities, which will contain the general-purpose financial statements and the relevant auditor's report. AUDITOR shall, if requested by the fiscal advisor and/or underwriter, issue a "consent and citation of expertise" and any necessary "comfort letters".

Working Paper Retention and Access to Working Papers

At AUDITOR's expense, all working papers and reports relevant to services performed under this Agreement shall be retained for a minimum of seven (7) years from the end of the fiscal year to which they apply or for a different period of time if so notified in writing by CITY. AUDITOR shall make working papers available, upon request, to the following parties or their designees:

- Employees of CITY;
- U. S. Department of Housing and Urban Development (HUD);
- U. S. General Accounting Office (GAO);
- Parties designated by the federal or state governments or by CITY as part of an audit quality review process;
- Auditors of entities of which CITY is a sub-recipient of grant funds;
- State of California Office of the State Controller.

In addition, AUDITOR shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

Audit Engagement Schedule

Initial Planning Meeting (June each year) - AUDITOR shall meet with CITY management to discuss audit approach and timing, identify CITY's specific needs and familiarize itself with CITY policies and practices.

Interim Phase of Audit (Dates to be agreed upon by AUDITOR and CITY) - AUDITOR shall perform the internal control reviews, test transactions, evaluate compliance with Single Audit Act requirements, identify potential audit issues that need to be addressed, perform limited confirmation procedures, and develop a clear understanding of year end audit responsibilities and assignments.

Year End Phase of Audit (Dates to be agreed upon by AUDITOR and CITY) - AUDITOR shall conduct validation procedures on general ledger account balances, develop financial statement report formats, prepare the necessary financial reports for CITY and its related entities, complete confirmation procedures, perform analytical procedures on revenue and expenditures, search for unrecorded liabilities, complete compliance work on Federal Financial Assistance, and wrap up audit field work.

Reporting (November each year of contract term, including extensions) - Prior to issuing any audit reports or the management letter, AUDITOR shall participate in an exit conference with the Finance Manager responsible for the accounting function to discuss observations, findings and recommendations. By November 1, assuming CITY's financial records are in adequate condition and no unusual issues are discovered during the audit process, AUDITOR shall issue the first draft of the required reports and the management letter. AUDITOR shall issue and deliver final reports to CITY's Director of Finance within three (3) working days after approval is granted by CITY.

No Fee Services

AUDITOR shall provide the following services at no cost to CITY:

- At least forty (40) hours of consulting service in each year of the contract, including extensions.
- Periodic updates to CITY about recent developments in governmental accounting and reporting.
- Perform agreed-upon procedures to review the GANN Appropriations Limit calculations.
- Respond to questions from CITY staff to assist in the running of CITY operations and the implementation of improved operating procedures.

EXHIBIT "B"
COMPENSATION

Total Professional Fees per Contract Year

Total professional fees to perform the required audit services are:

For the year ending June 30, 2001	\$ 75,750.00
For the year ending June 30, 2002	\$ 76,760.00
For the year ending June 30, 2003	\$ 77,605.00
For the year ending June 30, 2004	\$ 77,605.00
For the year ending June 30, 2005	\$ 77,975.00

Professional Fees - Contract Extension

Should CITY exercise its option to extend this Agreement for two additional one-year periods, the maximum total compensation and AUDITOR's hourly rates for each ensuing year in which this Agreement is in effect shall be established by multiplying the maximum total compensation and the hourly rates for 2005 times the ratio of the most recent Consumer Price Index for the San Francisco-Oakland Bay Area, compiled by the U. S. Department of Labor (CPI-U) as of April 1 of said ensuing year to such CPO for April 1, 2005.

Hourly Rates for Additional Services

	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Partners	\$135.00	\$135.00	\$140.00	\$140.00	\$145.00
Managers	\$105.00	\$105.00	\$120.00	\$120.00	\$120.00
Supervisory Staff	\$ 95.00	\$ 95.00	\$105.00	\$105.00	\$105.00
Professional Staff	\$ 60.00	\$ 60.00	\$ 60.00	\$ 60.00	\$ 60.00
Administrative Staff	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00

Progress Payments

Progress payments will be made on the basis of hours of work completed during the course of the engagement. Interim billing shall cover a period of not less than a calendar month. Payment will be made within thirty (30) days of receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

EXHIBIT "C"
INSURANCE REQUIREMENTS

AUDITOR shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

AUDITOR shall take out and maintain during the life of the Agreement **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

AUDITOR shall take out and maintain during the life of the Agreement **Professional Liability Insurance** for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions, as follows:

- Notice of cancellation or non-renewal must be received by CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.
- If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.

AUDITOR shall take out and maintain during the life of the Agreement such **Commercial General Liability Insurance** as shall protect AUDITOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the Agreement, whether such services are performed by AUDITOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from AUDITOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an occurrence basis.
- Broad form property damage liability. Deductible shall not exceed \$5,000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the Agreement.
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.